



Civilian Human Resources Agency



LAW ENFORCEMENT AVAILABILITY PAY (LEAP): Impact to Benefits and Retirement

Defense Civilian Personnel Advisory Services Benefits Symposium

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Civilian Human Resources Agency Headquarters
Department of the Army
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Objectives

Participants will

- Gain an understanding of Special Retirement Coverage (SRC) provisions as they pertain to Law Enforcement Officer (LEO) positions
- Be able to identify positions covered under Special LEO Pay
- Gain an understanding of LEAP eligibility criteria
- Be able to identify LEAP recipients based on SF 50 information and properly credit LEAP in the high three average salary calculation
- Be able to identify Administratively Uncontrollable Overtime (AUO) based on SF 50 information



References

- Title 5 United States Code (USC) Chapters 83 and 84
- Title 5 Code of Federal Regulations (CFR) Part 831 CSRS, Subpart I Law Enforcement Officers and Firefighters
- 5 CFR Part 842 FERS-Basic Annuity, Subpart H, Law Enforcement Officers, Firefighters and Air Traffic Controllers
- 5 CFR Part 550 Pay Administration
- Civil Service Retirement System (CSRS) and Federal Employees Retirement System (FERS) Handbook for Personnel and Payroll Offices Chapter 46
- Department of Defense Instructions (DoDI) 1400.25 Volume 336, Department of Defense (DoD) Civilian Personnel Management System: Civilian Firefighters and Law Enforcement Officers.
- Guide to Processing Personnel Actions Chapter 19
- Defense Civilian Personnel Advisory Services (DCPAS) Special Retirement Provisions for Law Enforcement Officers, Firefighters and Air Traffic Controllers Reference Guide, January 2016.



Definition of Law Enforcement Officer (LEO) Under Special Retirement Provisions

Civil Service Retirement System (CSRS)

5 United States Code (USC) 8331(20)

An employee in a position whose duties are primarily –

- The investigation, apprehension, or detention of individuals suspected or convicted of offenses against the criminal laws of the United States,
- Also included is an employee engaged in this activity who moves directly to a secondary position.



Definition of LEO Under Special Retirement Provisions

Federal Employees Retirement System (FERS)

5 USC 8401(17)

An employee occupying a rigorous position whose primary duties are –

- The investigation, apprehension, or detention of individuals suspected or convicted of offenses against the criminal laws of the United States, **OR**
- The protection of officials of the United States against threats to personal safety; **and**
- Are sufficiently rigorous that employment opportunities should be limited to young and physically vigorous individuals, as determined by the Director considering the recommendations of the employing agency
- Also included is an employee engaged in this activity who moves directly to a secondary position after meeting transfer requirements.



Secondary LEO Positions Defined

A secondary position is a position that:

- Is in the law enforcement field;
- Is in an organization having a law enforcement mission; and
- Is either:
 - Supervisory, that is, a position whose primary duties are those of a first-level supervisor of law enforcement officers in primary positions; or
 - Administrative, that is, an executive, managerial, technical, semiprofessional, or professional position for which experience in a primary/rigorous law enforcement position, or equivalent experience outside the Federal government, is a mandatory prerequisite.



Secondary CSRS SRC Positions and Transfer Requirements

A **CSRS** employee's service in a secondary position is covered under the special provision, if all the following requirements are met:

- The employee, while covered under the special provision, moves directly (that is, without a break in service exceeding 3 days) from a primary position to a secondary position; and
- If applicable, the employee has been continuously employed in a secondary position or positions since moving from a primary position without a break in service exceeding 3 days.



Secondary FERS SRC Positions and Transfer Requirements

A **FERS** employee's service in a secondary position is covered under the special provision, if all the following requirements are met:

- The employee, while covered under the special provision, moves directly (that is, without a break in service exceeding 3 days) from a rigorous position to a secondary position; and
- The employee has completed **3 years** of service in a rigorous position, including any such service during which no FERS deductions were withheld; and
- If applicable, the employee has been continuously employed in a secondary position or positions since moving from a primary position without a break in service exceeding 3 days.



Special Coverage Rules

Non Deduction Service

- Non deduction service can be used to meet the transfer requirement EVEN IF a deposit is not/cannot be paid for that service (post 1988)
- Pre 1989 non deduction service must be paid in order for FERS LEO to get credit toward eligibility and annuity computation.

Details/Temporary Promotions

- The position of record governs the employee's retirement coverage.
- Permanent position changes that result in retained grade also retain the retirement coverage of the previous position until the grade retention terminates.

Potentially Creditable Service

- Counts towards Mandatory Separation date calculation, even if deposit/redeposit is not paid **IMPACT-separation without entitlement**



Detention LEO Positions

"Detention duties" means duties that require **frequent direct contact** in the detention, direction, supervision, inspection, training, employment, care, transportation, or rehabilitation of individuals suspected or convicted of offenses against the criminal laws of the United States or the District of Columbia, or offenses against the punitive articles of the Uniform Code of Military Justice (10 U.S.C. chapter 47).

"Frequent direct contact" means personal, immediate, and regularly assigned contact with detainees, while performing detention duties that are repeated and continued over a typical work cycle.



What is NOT an LEO?

- The definition of LEO *does NOT include a position where primary duties involve:*
- Maintaining law and order,
- Protecting life and property,
- Guarding against or inspecting for violations of law, **OR**
- Investigating persons other than persons who are suspected or convicted of offenses against the criminal laws of the United States.
- Detention positions which involve *infrequent* and/or *indirect* contact with inmates.

Within DoD, Occupational Series 0083-police officer or 0085-security guard are NOT an LEO for the purposes of special retirement provisions



Who decides if it's an LEO?

Position Coverage

In order for a position to be covered under special retirement provisions the position must be approved for coverage as a primary or secondary position by the Agency Head. The Secretary of Defense has delegated the approval authority for Department of Defense positions to the Under Secretary of Defense for Personnel and Readiness (USD (P&R)).

Individual Coverage

In order for an employee to remain covered under special provisions in a position approved for secondary coverage, the employee must meet transfer requirements for their respective retirement system.



How does SRC approval impact the position/employee?

Positions approved for SRC:

- Maximum Entry Age (MEA)-primary positions
- Mandatory Separation-covered employees
- Additional .5% retirement contributions-covered employees
- Retirement Code=CSRS-6, CSRS Offset-E, FERS-M, FERS-RAE-MR, FERS-FRAE-MF
- Early retirement with an enhanced annuity computation at age 50 with 20 years of SRC service (CSRS/FERS) or any age with 25 years of SRC service (FERS)-covered employees
- Eligibility for LEO pay table or Law Enforcement Availability Pay-primary and secondary positions, SRC coverage not required



Enhanced Annuity Computation

CSRS: $2.5\% \times \text{H3} \times \text{first 20 years of LEO service}$,
plus $2.0\% \times \text{H3} \times \text{all service over 20 years}$

FERS: $1.7\% \times \text{H3} \times \text{first 20 years of LEO service}$,
plus $1.0\% \times \text{H3} \times \text{all service over 20 years}$

- Not eligible for the 1.1% calculation

Law Enforcement Availability Pay is used to calculate the H3 for Criminal Investigators, up to the salary cap.



Maximum Entry Age

DoDI 1400.25 Volume 336

- **Maximum Entry Age (MEA)**

Employees initially hired or rehired into LEO positions must be able to complete 20 years by their 57th birthday unless an age waiver has been approved by the designated agency approval authority.

- **Exceptions to the MEA**

Such an exception will be extremely rare and based only on a compelling hardship to the DoD Component mission, such as overcoming a recruitment shortage.

- **Preference Eligible Veterans** 5 U.S. Code § 3312(a)(1)

DoD Components will waive the maximum entry age requirements for preference eligibles, unless it is determined that the age is essential to the performance of the duties of the position being filled. The determination that age is essential must be made before announcing the position and a copy retained in the case file.



Maximum Entry Age Waivers

- Must be in writing and approved by the designated agency approval authority
- Must be filed in the employee's Official Personnel Folder (OPF)
- Allow the employee to remain employed in a covered position until he or she meets the retirement requirements for SRC retirement (age and length of service) provided the employee continues to meet the physical requirements of the position
- Not required for direct entry/reentry into Secondary positions



Mandatory Separation

- Mandatory separation age for LEOs is age 57. The employee must be separated/retire on the last day of the month in which they have reached age 57 AND completed 20 years of SRC service.
- If the employee does not have the required 20 years of service at age 57, the employee must be separated on the last day of the month in which they complete 20 years of SRC service. (should have a MEA waiver on file)
- Must continue to meet the physical requirements of the position or is subject to removal from the position.



Notification Requirements

- HRO must notify the employee, in writing, at least 60 days before the mandatory separation date.
- If not timely notified, may not be mandatorily separated until the last day of the month which is 60 days after the notification was given.
- Not considered an adverse action under 5 CFR Part 752 or a removal action under 5 CFR Part 359 and is not appealable.
- Failure to submit a retirement application will still result in separation on the mandatory separation date unless a separation waiver has been approved.
- If eligible, employee may choose to retire before the mandatory retirement date-voluntary retirement
- Employee may also move to a non-SRC position



Mandatory Separation Waivers

- The agency designated approval authority may exempt a law enforcement officer from mandatory separation until the employee turns 60 years of age if, in the judgment of the approval authority, the public interest so requires. In such a case, the employee will be separated on the date specified by the approval authority and no later than the day the employee turns age 60.
- Only the Office of Personnel Management (OPM) for CSRS or the President of the United States for FERS, if determined to be in the public interest, may exempt a law enforcement officer from mandatory separation at age 60 or older.
- MRD is adjusted to date specified in the waiver
- Continuance NTE (NOAC 750) personnel action is processed. See GPPA Chapter 19



Questions on SRC???



Pay under LEO Tables

- Authorized by section 403 of the Federal Employees Pay Comparability Act of 1990
- Applicable to employees who meet the definition of "law enforcement officer" in 5 U.S.C. 5541(3) and 5 CFR 550.103 (same definition as applied to SRC eligibility 5 USC 8331(20) or 8401(17))
- Locality Pay Tables at <https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/2019/law-enforcement-officer/>
- Restricted to LEO positions in grades 03-10 LEO
- Grades other than those above fall under the regular rate for the specific locality area
- Indicated by Pay Plan "GL"

SALARY TABLE 2019-RUS (LEO)
INCLUDING SPECIAL BASE RATES AT GS-3 THROUGH GS-10 AND
INCORPORATING THE 1.4% GENERAL SCHEDULE INCREASE AND A LOCALITY PAYMENT OF 15.67%
FOR THE LOCALITY PAY AREA OF REST OF U.S.

TOTAL INCREASE: 1.66%
EFFECTIVE JANUARY 2019

Annual Rates by Grade and Step

Grade	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6	Step 7	Step 8	Step 9	Step 10
1	\$ 22,033	\$ 22,771	\$ 23,504	\$ 24,232	\$ 24,965	\$ 25,393	\$ 26,117	\$ 26,848	\$ 26,877	\$ 27,561
2	24,773	25,363	26,183	26,877	27,179	27,978	28,778	29,577	30,376	31,175
3	32,436	33,337	34,238	35,139	36,040	36,942	37,843	38,744	39,645	40,546
4	36,409	37,420	38,431	39,442	40,453	41,464	42,475	43,486	44,497	45,508
5	41,868	42,999	44,130	45,262	46,393	47,524	48,655	49,787	50,918	52,049
6	44,152	45,414	46,676	47,938	49,200	50,462	51,724	52,986	54,248	55,510
7	47,661	49,063	50,465	51,866	53,268	54,670	56,072	57,474	58,876	60,278
8	49,677	51,229	52,781	54,334	55,886	57,438	58,991	60,543	62,095	63,647
9	53,154	54,868	56,582	58,297	60,011	61,725	63,439	65,153	66,868	68,582
10	58,535	60,423	62,310	64,198	66,086	67,973	69,861	71,749	73,637	75,524
11	62,236	64,311	66,386	68,462	70,537	72,612	74,687	76,762	78,837	80,912
12	74,596	77,082	79,569	82,056	84,543	87,030	89,517	92,004	94,491	96,978
13	88,704	91,660	94,617	97,573	100,530	103,486	106,443	109,400	112,356	115,313
14	104,821	108,316	111,810	115,304	118,799	122,293	125,788	129,282	132,776	136,271
15	123,298	127,408	131,518	135,628	139,737	143,847	147,957	152,067	156,176	160,286

NOTE: Locality rates for "law enforcement officers" (LEOs) (as defined in 5 U.S.C. 5541(3) and 5 CFR 550.103) are computed using special base rates for LEOs at grades 3 through 10, as authorized by section 403 of the Federal Employees Pay Comparability Act of 1990, as amended. The LEO annual locality rates at other grades match the rates for other (non-LEO) employees.

Applicable locations are shown on the 2019 Locality Pay Area Definitions page: <http://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/2019/locality-pay-area-definitions/>



Law Enforcement Availability Pay (LEAP)

Eligibility criteria defined in 5 CFR 550

- A properly classified GS-1811 or 1812 position meeting the definition of a Law Enforcement Officer under 5 USC 8331(20) or 8401(17)
 - Also included are certain positions in the US Customs Service and the Department of State
 - Includes employees who are occupying an approved secondary position but who failed to meet transfer requirements to continue special retirement coverage provisions in the secondary position
- Annual average number of unscheduled duty hours per regular workday is 2 hours or more as described in §550.183
- Unscheduled duty hours are hours during which employee performs work, **or** is determined by the agency to be available for work which are **NOT** part of the basic 40-hour workweek or regularly scheduled overtime hours compensated under 5 USC 5542
- Initial certification of the expectation to meet eligibility for LEAP and annual certification that the employee continues to meet eligibility by designated agency official are required
- Provisions for denying or cancelling LEAP are provided in § 550.184(d)



Law Enforcement Availability Pay (LEAP)

Premium Pay Authorized by 5 U.S.C. 5545

- 5 USC 5545(c)(2) an employee in a position in which the hours of duty cannot be controlled administratively, and which requires substantial amounts of irregular, unscheduled overtime duty with the employee generally being responsible for recognizing, without supervision, circumstances which require the employee to remain on duty, shall receive premium pay for this duty on an annual basis instead of premium pay provided by other provisions of this subchapter, except for regularly scheduled overtime, night, and Sunday duty, and for holiday duty. Premium pay under this paragraph is an appropriate percentage, not less than 10 percent nor more than 25 percent, of the rate of basic pay for the position, as determined by taking into consideration the frequency and duration of irregular, unscheduled overtime duty required in the position.



Law Enforcement Availability Pay (LEAP)

Other Premium Pay

An agency may not pay a criminal investigator receiving availability pay--

- (1) annual premium pay for administratively uncontrollable overtime (AUO) work or regularly scheduled standby duty, or
- (2) overtime pay under the Fair Labor Standards Act. Receipt of availability pay does not affect a criminal investigator's entitlement to other types of premium pay (including title 5 overtime pay) based on regularly scheduled duty hours. However, a criminal investigator receiving availability pay may not be paid any other premium pay based on unscheduled duty hours.

Title 5 Overtime Pay

For employees receiving availability pay, title 5 overtime pay is authorized only for overtime work scheduled in advance of the administrative workweek that is either in excess of 10 hours on a day containing part of the basic 40-hour workweek or on a day that does not include part of the basic 40-hour workweek. (See exception in 5 U.S.C. 5542(e) for employees who perform protective duties.)



Identifying LEAP

LEAP will be identified in the block for “other pay” on the Standard Form (SF) 50. Information should also be in the remarks section of the SF 50. There will be a SF 50 action to establish and/or discontinue LEAP (NOAC 819)

FIRST ACTION					
5-A. Code	5-B. Nature of Action				
894	GEN ADJ				
5-C. Code	5-D. Legal Authority				
ZLM	REG 9901.323(a)				
5-E. Code	5-F. Legal Authority				
7. FROM: Position Title and Number					
SUPV CRIMINAL INVESTIGATOR					
9S181-1105573					
8. Pay Plan	9. Occ. Code	10. Grade or Level	11. Step or Rate	12. Total Salary	13. Pay Basis
YK	1811	03	00	\$150,635.00	PA
12A. Basic Pay		12B. Locality Adj.	12C. Adj. Basic Pay	12D. Other Pay	
\$100,432.00		\$20,076.00	\$120,508.00	\$30,127.00	
14. Name and Location of Position's Organization					

45. Remarks

Salary in block 20 includes availability pay of \$30127.



LEAP and Biweekly Pay Cap

Under 5 U.S.C. 5547(a) and 5 CFR 550.105, employees may receive premium pay only to the extent that the payment does not cause the total of basic pay and premium pay for the biweekly pay period to exceed the **greater** of:

- (1) the maximum biweekly rate of basic pay payable for GS-15, step 10 (including any applicable locality payment or special rate supplement), or
- (2) the biweekly rate payable for level V of the Executive Schedule



LEAP counts for...

Subject to the biweekly pay cap, LEAP is treated as part of basic pay for:

- Lump Sum Annual Leave (5 CFR § 550.1205)
- Retirement benefits under 5 U.S.C. 8331(3) and 8401(4) (High Three and FERS Annuity Supplement)
- TSP under 5 U.S.C. 8431
- Group life insurance under 5 U.S.C. 8704(c)
- Workers' compensation under 5 U.S.C. 8114(e)



Verifying Pay Does Not Exceed Pay Cap

Step 1: Find the duty station code on the SF 50

POSITION DATA	
34. Position Occupied	
<input type="checkbox"/> 1 - Competitive Service	<input type="checkbox"/> 3 - SES General
<input type="checkbox"/> 2 - Excepted Service	<input type="checkbox"/> 4 - SES Career
36. Duty Station Code	
250365017	

Step 2: Go to Salaries & Wages section of the OPM website:

<https://dw.opm.gov/datastandards/dutystation/main.jsp>, click on *Duty Station Locator* (under related information, top right of page), click on *Search Duty Station By Code*, enter 9 digit duty station code and click *SEARCH*

Enter a Duty Station Code

(9 character duty station code)

Search Results

Code	LPA	CBSA	CSA	City	County	State	Country
250365017	BO - Boston-Worcester-Providence, MA-RI-NH-ME	14460	148	FORT DEVENS, AYER	MIDDLESEX	MASSACHUSETTS	UNITED STATES



Verifying Pay Does Not Exceed Pay Cap cont.

Step 3: Go to the Pay Administration section of the OPM Website:

<https://www.opm.gov/policy-data-oversight/pay-leave/pay-administration/>
and click on the Biweekly Pay Caps tab.

Find the applicable pay table and you will see both the Biweekly and Annual Pay Cap.

- If employee's total pay is less than the annual pay cap, use the total pay from the employee's SF 50.
- If the total pay on the SF 50 exceeds the annual pay cap, use the annual cap amount.

Locality Pay Area (see NOTE 2)	Locality Pay Percentage	Greater of the GS-15, Step 10, Locality Rate or Level V of the Executive Schedule (see NOTE 3)	
		Biweekly Cap	Applicable Annual Cap Assuming 26 Biweekly Salary Payments (see NOTES 1 and 4)
Alaska	28.89%	\$6,382.40	\$165,942.40
Albany-Schenectady, NY-MA	17.19%	6,224.80	161,844.80
Albuquerque-Santa Fe-Las Vegas, NM	16.20%	6,172.00	160,472.00
Atlanta-Athens-Clarke County-Sandy Springs, GA-AL	21.64%	6,382.40	165,942.40
Austin-Round Rock, TX	17.46%	6,239.20	162,219.20
Birmingham-Hoover-Talladega, AL	15.77%	6,149.60	159,889.60
Boston-Worcester-Providence, MA-RI-NH-ME	28.27%	6,382.40	165,942.40





Verifying Pay Does Not Exceed Pay Cap cont.

Step 4: Follow steps 1-3 for each salary period to ensure that the proper basic pay is used for:

- retirement annuity (high three average salary)
- FERS annuity supplement
- FEGLI coverage and premium deductions
- lump sum annual leave payout



Exercises



Administratively Uncontrollable Overtime (AUO)

The head of an agency may approve AUO pay for an employee in a position in which the hours of duty cannot be controlled administratively and which requires substantial amounts of irregular, unscheduled overtime work, with the employee generally being responsible for recognizing, without supervision, circumstances which require the employee to remain on duty. AUO pay is compensation for all irregular overtime hours (i.e., overtime hours that are not regularly scheduled) and may not exceed 25 percent of an employee's rate of basic pay.

- Subject to a pay cap
- Considered part of basic pay for retirement and FEGLI **only** for LEOs
- No longer paid to Criminal Investigators or LEO (replaced by LEAP in 1995)



Civilian Human Resources Agency



Recognizing AUO

5-A. Code	5-B. Nature of Action				
	AUTHORIZED AUO				
5-C. Code	5-D. Legal Authority				
	REG 550.151				
5-E. Code	5-F. Legal Authority				
7. FROM: Position Title and Number					
8. Pay Plan	9. Occ. Code	10. Grade or Level	11. Step or Rate	12. Total Salary	13. Pay Basis
GM	1811	13	00		PA
12A. Basic Pay	12B. Locality Adj.	12C. Adj. Basic Pay	12D. Other Pay		
\$66,344.00	\$0.00	\$66,344.00	\$16,586.00		
14. Name and Location of Position's Organization					

45. Remarks

BLOCK 20 SHOWS THE PERCENT OF YOUR RATE OF ADJUSTED BASIC PAY WHICH IS PAID TO YOU FOR THE SUBSTANTIAL, IRREGULAR OVERTIME WORK YOU PERFORM WHICH CANNOT BE CONTROLLED ADMINISTRATIVELY.



Summary

- Positions meeting the statutory definition of a Law Enforcement Officer and which are approved for coverage by the designated agency approval authority are covered under Special Retirement Coverage (SRC) provisions
- Employees occupying positions approved for primary SRC are subject to increased retirement deductions, MEA restrictions and mandatory separation requirements
- Employees occupying positions approved for secondary SRC are subject to SRC, MEA and mandatory separation if transfer requirements are met
- Employees covered under SRC pay additional retirement deductions and are eligible for early retirement with an enhanced annuity
- Approved LEO positions at grades 3 through 10 are eligible for pay under special LEO pay tables
- Approved Criminal Investigator positions may be eligible for Premium Pay under 5 U.S.C. 5545 (LEAP)
- LEAP is subject to a biweekly pay cap so calculation of the H3 may require adjustment
- AUO may be used in the calculation of the H3 for approved Criminal Investigator positions but was replaced by LEAP in 1995



Questions???